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May 23, 2008

VIA HAND DELIVERY

City Clerk
City of Santa Barbara
735 Anacapa Street
Santa Barbara, CA 93101

MAY 23 2008
4:10pm smk
CITY CLERK'S OFFICE
SANTA BARBARA, CA

RE: Appeal of Certification of the Revised EIR for the Veronica Meadows Project

Dear Clerk:

This office represents the Citizens Planning Association and Santa Barbara Urban Creeks Council in the above matter, and by this letter we are filing an appeal to the City Council of the Planning Commission's certification of the Revised Environmental Impact Report ("EIR") for the Veronica Meadows project on behalf of our clients. We are of the opinion that this appeal is unnecessary. Indeed, the Revised EIR states that the Council will certify the EIR. However, the applicant has argued to the Superior Court (unsuccessfully) that my clients were required to appeal the previous EIR certification for Veronica Meadows to the Council, and the response to comments refuses to answer the question of whether the City deems an appeal necessary in this instance. Regardless, it is clear that the Council must certify the Revised EIR regardless of an appeal, and that any person may raise any issue associated with environmental review before the Council. Accordingly, if the City deems this appeal unnecessary, as we believe it should, we request a full refund of the appeal fee enclosed herewith. Finally, this project lies within the Coastal Zone. While an appeal fee is enclosed, please do not cash the check until it is determined that an appeal fee is indeed appropriate. We believe a fee is not appropriated under the circumstances.

The issues on appeal include, but are not limited to, the following:

1) The Planning Commission did not make a recommendation on the Project to the Council as required by City Charter § 806, and the City Municipal Code. The City has taken the erroneous position that the Planning Commission's previous recommendation on the Project is still effective. There are two problems with this assertion. First, the Court directed that "all" approval be rescinded by the City. Second, the Planning Commission cannot certify an EIR

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after approval of a Project. The Planning Commission must consider the Revised EIR prior to Project recommendation. Therefore, the Commission's certification violates CEQA, and the Commission must also make a recommendation based on the Revised EIR.

2) The Planning Commission did not consider any feasibility analysis in certifying the Revised EIR or in its prior recommendation of the Project. The Planning Commission was required to consider feasibility as part of its recommendation, including economic feasibility.

3) The alternatives analysis has been improperly recast in the Revised EIR by eliminating the feasibility determination of the preexisting EIR for the Alan Road alternative. The EIR also fails to account for traffic improvements that are already planned that would reduce significant impacts to the Cliff/Las Positas intersection to a level of insignificance. The EIR assumes that these improvements will not exist by the time the Project is completely built and occupied or shortly thereafter.

4) The Revised EIR does not consider a range of feasible alternatives, including a reduced project alternative which is clearly feasible based on the record in this matter.

5) The Revised EIR fails to address the irretrievable commitment of resources pursuant to 14 CCR § 15162.2(c) pertaining to the City's water supply.

6) The Response to Comments in the Final Revised EIR are inadequate or refuse to answer the questions directly raised, or misrepresents the facts in this matter. The comments on the Draft Revised EIR are incorporated by reference herein, which include, but are not limited to, the following:

a) The Revised EIR misrepresents the ruling of the Superior Court in overturning the Council's 2006 approval of the Project.

b) The EIR fails to identify the County of Santa Barbara as a responsible agency that will approve the lot line adjustment. Instead, the EIR assumes that the City will approve the lot line adjustment.

c) The Project violates Section 520 of the City Charter. Regardless of whether the road is a public road or not, it is inconsistent with the Charter and is clearly not for park purposes. The City has stated that it was granting an easement to the applicant for the bridge and roadway. Now the City is simply arguing form over substance by calling it a "public road." But, the road is merely for the purpose of serving development. It is not compatible or accessory to the park's purposes as the City alleges.

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d) The Project is potentially inconsistent with Public Resources Code Section 30240, which protects environmentally sensitive habitats. Yet, the Revised EIR offers no solution for this inconsistency. The Final Revised EIR concludes that this is a decision for the Planning Commission (which never made a recommendation based on the Revised EIR) and the Council. But, the EIR must analyze potential inconsistencies.

e) The Revised EIR states "Ultimately the decision makers in the City, the Council, may reach a different conclusion, as long as it is supported by evidence and is explained in appropriate environmental findings." However, the City Council must certify the EIR's adequacy. It cannot contradict the conclusions of the EIR.

f) The Revised EIR never performs an adequate analysis of what could really be built on the site under the existing County zoning, and erroneously concludes that a bridge would be constructed over Arroyo Burro Creek when the County has recommended against building such a bridge.

g) The Revised EIR fails to quantify the impact of Phase 2 construction on the Alan Road residents if the Alan Road Access Alternative was adopted.

h) The Revised EIR fails to analyze alternative bicycle and pedestrian access without development of the bridge over Arroyo Burro Creek.

i) The Revised EIR admits that a 15-unit project with access via Alan Road would reduce any significant effect on traffic at Cliff Drive/Las Positas Road. Accordingly, a lower density alternative must be addressed in the Revised EIR since this would be a feasible manner in which to reduce impacts.

The Revised EIR is deficient, inadequate and/or misrepresent the environmental consequences as outlined in each of these comments.

Finally, because this appeal is unnecessary pursuant to the California Environmental Quality Act and the Santa Barbara Superior Court's prior rulings in *Citizens Planning Association, et al. v. City of Santa Barbara, et al.*, our clients are entitled to raise any and all issues prior to the City Council's approval of the Project, and reserve the right to bring up additional issues as they come to light during this hurried administrative process.

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Thank you for your consideration.

Very truly yours,
WITTWER & PARKIN, LLP



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cc: Clients